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Chiropractic Testimony: How to Protect Your Case from Taking a Wrong Turn

Bill Price, Esq.

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How to Strengthen Your Chiropractic Case

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What happens when
Chiropractor Testifies.

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Goal: Polarize the Jury

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Typical Fact Pattern in Jury Polarization and Nullification

- Good Client- Presents Well;
- Negligence is typically admitted;
- Presentation of Damages;
- Juries typically compromises on the Damages;
- Jury hears enough negative information about the Chiropractor;
- Deliberations do not end in compromises, but the result of polarizing attitudes;

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Jury Polarization

Means that jurors who started out with more middle of the road attitudes (just slightly leaning to one side) when put into a group setting become more extreme in their viewpoints.

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Easiest Place to Attack:
Chiropractor

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First Wave: Damage to
Vehicle v. Injury Sustained

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Level of Damage is Equal to Level of Damage

- Doctor inquire about accident and the damage to car;
- Photographs will always come up;
- Limitations after the accident;
- Securing police reports;

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Second Wave: Police Reports

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What doctor requests police report?

- Policy of requesting police reports;
- Time of when the police report is requested;
- What Medical Relevance is in the Police Report;
- Police Officer: medical qualifications, administering treatment;

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Solicitation Call or Letter

- When did they receive the call or letter:
 - Relationship to the accident;
 - Content in the call;
 - Letter – still have a copy; Does the chiro have a copy;
 - How did they get the Plaintiff information;
 - Plaintiff ever meet before;
 - Anything Offered for Free;
 - Any Disclaimer;
 - Discuss payment plans;
 - Discuss auto insurance;
- Appointment made;
- Vehicle sent to pick up the Plaintiff;
- Who was the driver; charge for ride;
- Date picked up;

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Goals of Questions

- Chiropractor Credibility;
 - Business/
 - Not in Patients best interests;
 - Suspicious Activity;
 - Doubt;
- False Pretenses:

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Third Wave: Relationship between Chiropractor and Lawyer

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Legal Counsel

- Lawyer:
 - Who brings up the “lawyer” topic;
 - Discuss lawyers name;
 - Content of discussion;
 - Provide a number lawyers;
 - Was a number of lawyers offered;
 - Did you choose a lawyer and how;
 - How did the Plaintiff choose lawyer;
 - Did you call the attorney from the office;
 - Point to a specific attorney;
- Did the attorney talk to them on the phone;
- Appointment – made after the appointment;
- Who explained the agreement;
- Did the chiro know the attorney;

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Referrals to Attorneys

- Why do you make referrals out;
- For what purposes is the referral are made;
- Is there any purpose or reason due to the fact that you will bill has not been paid;
- The report is generated to the same attorney that the referral is made;
- Referral to the attorney office will be for purpose of testifying;

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Discussion with the patient about being represented

- Who actually approaches the patient about being represented;
- How is the subject matter brought up about being represented by an attorney;
- Who in your office is licensed to speak about a case;
- Is there a protocol in asking patients about representation by an attorney;
- Is there a protocol or a scrip about what is said;
- Who creates the script or protocol and when does it occur;
- Is there a certain time in the first visit when the discussion will occur;
- How are the records sent to the attorney;
- Are their certain statements made to the attorney about the Plaintiffs health;
- Do you have a release from the Plaintiff to speak to the attorney concerning the case;

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What Role Does the Attorney Representation Play in the Medical Care and Treatment of a Patient?

- Is there any bearing that the attorney representation have on the treatment of the Plaintiff;
- Is there any attorney input on how the treatment of the Plaintiff is to occur;
- What is the relevance in determining whether the plaintiff is represented or not;
- Is part of the rule of the chiropractor to ensure or confirm representation by the attorney;
- If you confirm treatment with the chiropractor, then is it not a violation of the patient;

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Fourth Wave: Attack How The Treatment is Administered.

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First Visit

- What happened during first exam;
- How long did it last;
- Type of Treatment during the first day;
- What types of procedures;
- Did they talk to you about the free exam;
- Was the office visit concluded within an hour;
- What were the results;
- Did the doctor discuss payment;
- What were the results;
- Medication;
- Recommend outside treatment;
- X-rays; Therapies; Procedure Occurs;
- Recommended length of treatment;

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Intake Sheet

- Is there a reason why you list personal injury on the intake sheet;
- Is there a separate billing department for the auto accidents;

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Modalities or Therapies;

- Qualifications to people who administer modalities;
 - Do you need to be licensed by a state to administer modalities;
 - Is there a minimum educational requirement to administer modalities;
 - Is there any requirement promulgated by the chiropractor association for what assistants must be educated or licensed to administer modalities;
- What is the educational background of those who administered the modalities on the Plaintiff;

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Compare:

- Chiropractor v. Medical Doctor;
 - Lack of Effort on Part of Chiropractor;
 - Type of Treatment;
 - Hot Packs/Cold Packs/etc.
 - Roller Machine;
 - Traction Machine;
 - No Medicine;
- Attack License/Experience:
 - How got license;
 - Education;
 - What can and can't do with the license;

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Taking Down the Plaintiffs History

- If history is deficient, the Plaintiff does not give enough in the way of information regarding the history;
 - Plaintiff may be lying;
 - They do not remember all the facts of the case;
 - Facts in records contradict testimony of Plaintiff;
 - Inconsistent statements in medical records;

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CPT Codes

- What are they?
- Who decides what CPT codes are and how they will be assigned to each injury;
- What is the criteria for deciding CPT codes;
- What CPT codes criteria are based upon the modalities of type of treatment;
- CPT codes are high, low, medium;
- If the CPT Codes are a cost, will more or greater level of treatment;

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Pain

- Plaintiff complains of pain yet the tests do not explain where the complaints come from;
- Cannot locate the exact origin of the pain;
- Exaggerates the pain is a possibility;
- They do not do additional test for the pain;
- Look for all the tests;
- Is there other multiple causes of the Plaintiffs injuries;

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Subjective v. Objective Evidence in the File

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Degenerative Changes

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Hypothetical Example

- Assume for the question: Remove the accident from the picture;
 - Agree the disc bulge can be attributed to Degenerative Changes or Aging;
 - Can you agree abnormalities found on the MRI are due to the Degenerative changes;
 - Can you Agree the MRI is only a poloroid shot of that time;
 - Can you agree abonormalities found on the MRI are due to Degenerative Changes;
 - Can you agree that the photograph is a certain period of time;
 - Can you agree that the MRI does not tell when the abnormalities developed;
 - Can you agree the MRI is of no assistance in determining whether or not the central disc bulge in the Plaintiff began years ago or was due to the accident;

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Does the Chiropractor have a
Second File ?

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Wave Five: Reviewing Prior
Medical History with the
Chiropractor

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Prior History

- Look at the Chiro file: do they have any of the prior health history;
- Does the doctor have a complete file;
- Review of dates of treatment with the Chiropractor and how severe her pain was before accident;
- Any letters to other treatment providers for records they need;
- Any phone calls requesting this information or requesting this information;

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Wave five: What percentage of work is dedicated to PI or BWC v. typical practices.

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Wave Six: Have you ever discounted any bills?

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Discounted Bills:

- Have you ever been involved in discounting bills;
- Have you ever had insurance company involved with discounting bills;
- Have you ever contacted the insurance carrier about discounting your bills;
- Have you ever discounted your bill by 90%;
- Does an aggressive insurance carrier ever play a role in discounting bills;

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Wave Seven: Letters of Protection

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Letters of Protection

- Agree that there is a letter of protection in the file;
- Doctor explains what a letter of protection is and what purpose the letter of protection is;
- Does the Letter of Protection have any guarantees;
- Impact on an adverse verdict;
- Confirm that due to the fact this letter is in there, Plaintiff has not paid for any treatment today;

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Wave Eight: What is the cost of chiropractic testimony?

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Wave Nine: Emotional Overlay

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Emotional Overlay

- Typical Plaintiff is anxiety, depression, etc.
- Is symptom magnification from emotional instability;
- Emotional overlay can be the cause of depression, schizophrenia, bipolar syndrome, etc.
- Identify the medical records in those areas, in which the Plaintiff has complained of emotional problems as well as other comments or statements she made to the doctor supporting the depression;
- Identify the medication taking at the time;
- Conclude with questioning that the depression has a vary adverse effect and amplifies one symptoms as a result of the accident;

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